

STATE OF WISCONSIN
DEPARTMENT OF INDUSTRY, LABOR & HUMAN RELATIONS

Robert Groh,
Appellant,

vs.

PECFA Claim #453072-9999-17

Secretary, DEPARTMENT OF INDUSTRY,
LABOR AND HUMAN RELATIONS,
Respondent.

FINAL DECISION

Pursuant to a petition filed April 14, 1994, under § 101.02(6)(e), Wis. Stats., and §ILHR 47.53, Wis. Adm. Code, to review a decision by the Department of Industry, Labor and Human Relations, a hearing was held on August 30, 1994, at Waukesha, Wisconsin.

The issue for determination is whether the department's decision denying Petroleum Environmental Cleanup Fund (PECFA) reimbursement in the amount of \$2,493.71 was reasonable. This amount was denied because the costs were incurred before April 2, 1991, the date that the Department of Natural Resources was notified of the contamination.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Mr. Robert Groh
2324 Ramshead Court
Waukesha, WI 53188

Department of Industry, Labor and Human Relations
Division of Safety and Buildings
By: Ronald Brisbois, PECFA Claim Reviewer
Bureau of Petroleum Inspection & Fire Protection
P O Box 7969
Madison WI 53707-7969

The authority to issue a final decision in this matter has been delegated to the undersigned by order of the Secretary dated June 10, 1994.

The Hearing Examiner issued a proposed decision in this case dated October 13, 1994. The parties were given 30 days to file objections. Mr. Groh filed objections to the proposed decision. Having considered the proposed decision and the objections, the matter is now ready for final decision.

ORDER

The Proposed Decision dated October 1, 1994, is hereby adopted as the final decision of the department with the following modifications:

In Conclusion of Law #3, the reference to "section 101.143(3)5, Stats.," is corrected to "§101.143(3)(a)5, Stats.," and the reference to "§ILHR 47.30(2)4" is corrected to "§ILHR 47.30(2)(a)4, Wis. Adm. Code."

In Conclusion of Law #4, the reference to " section 101.143 (3)(d)2 is corrected to §101.143 (4)(d)2, Stats.

DISCUSSION

In the decision that has been appealed, the owner/operator has been reimbursed for all claimed costs except for the deductible set by statute and \$2,493.71 in costs for services that were performed before the petroleum contamination was reported to the Department of Natural Resources (DNR). The proposed decision cites the administrative rules governing PECFA reimbursements, which specifically provide that costs for services performed before the report to DNR may not be reimbursed (§ILHR 47.30(2)(a)4, Wis. Adm. Code). The rule is not controlling in this situation because it was not in existence at the time that the services at issue here were performed (between February 19 and April 2, 1991). However, the same result is reached by applying the PECFA statute that was in effect between May 3, 1990, and August 14, 1991. The relevant portions of the statute provide:

“An owner or operator... may submit a claim to the department for an award under sub, (4)...if all of the following apply:

The owner or operator...reports the discharge in a timely manner to the division of emergency government...or to the department of natural resources, according to the requirements under §144.76.”

§ 101.143(3)(a)(Intro.) and 5, Stats.

The PECFA Over-view in use at this time also stated that an owner or-operator could submit a claim if among, other requirements, the owner or operator reported the discharge to the Division of Emergency Government or the DNR.

NOTICE TO PARTIES

Request for Rehearing

This is a final agency decision under §227.48, Stats. If you believe this decision is based on a mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision and which you could not discovered sooner through due diligence. To ask for a new hearing, send a written request to Department of Industry, Labor & Human Relations, Office of Legal Counsel P. O. Box 7946, Madison, WI 53707-7946.

Send a copy of your request for a new hearing to 0 the other parties named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the hearing examiner made and why it is important. Or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain how your request for a new hearing is based on either a mistake of fact or law or the discovery of new evidence which could not have been discovered through due diligence on your part, your request will have to be denied.

Your request for a new hearing must be received no later than 20 days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in Sec. 227.49 of the state statutes.

Petition For Judicial Review

Petitions for judicial review must be filed no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one). The petition for judicial review must be served on the Department of Industry, Labor and Human Relations, Office of Legal Counsel 201 E. Washington Avenue, Room 400y, P.O. Box 7946, Madison, WI 53707-7946.

The petition for judicial review must also be served on the other "PARTIES INTEREST" named in this decision. The process for judicial review is described in Sec. 227.53 of the statutes.

Signed and dated in Madison, Wisconsin this 30th day of
November, 1994.

Patrick J. Osborne, Deputy Secretary
Department of Industry, Labor & Human Relations
P O Box 7946
Madison WI 53707-7946
Telephone: 608-266-7552
Facsimile: 608-266-1784

cc: Parties in Interest

**STATE OF WISCONSIN
BEFORE THE
DEPARTMENT OF INDUSTRY, LABOR
AND HUMAN RELATIONS**

In the matter of the denial of
reimbursement of PECFA Program
funds to:

Milwaukee Hearing Office
819 N. 6th St. Room 382
Milwaukee, WI 53203
Phone: (414) 227-4416

MR ROBERT GROH

PECFA Claim No. 53072-9999-17

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

On March 25, 1994 the Department of Industry, Labor and Human Relations issued an appealable order denying Robert Groh supplemental reimbursement in the amount of \$2,493.71 under the PECFA program. Robert Groh filed a timely appeal from such denial on April 14, 1994. A hearing pursuant to that appeal was held on August 30, 1994 at -Waukesha, Wisconsin before, Administrative Law Judge William D. McKeown, acting a state hearing officer.

Based on the applicable records and evidence in this case, the appeal tribunal makes the following

PROPOSED FINDINGS OF FACT

1. At all times material, Robert Groh (hereinafter applicant) was the legal owner of the premises located at 24817 West: Blue Mound Road; Pewaukee, Wisconsin, and operated a business known as Cathodic Systems, Inc. at such location.
2. On or about February 19, 1991, two Underground Storage Tanks were removed from the premises identified in par. 1, above, at the request of the applicant. Notification to the Department of Natural Resources, as required by section 144.76 of the Wisconsin Statutes was originally determined to have been made on July 16, 1991.
3. The applicant filed its claim for reimbursement of the total cost incurred for removal of the Under Storage Tanks in the amount of \$56,401.91 in December of 1992. The Department of Industry, Labor and Human Relations tendered its check in partial reimbursement in the amount of \$49,503.32 on October 21, 1993.

4. The applicant requested reevaluation of the amount reimbursed, contending that the Department had erred by failing to reimburse the applicant for \$5,359.41 in expenses incurred for removal of the Underground Storage Tanks prior to July 16, 1991, together with interest incident thereto, and that the Department had erred in computing the statutory deductible under ILHR 47.34(b) of the Wisconsin Administrative Code.
5. After receipt of the applicant's request for reassessment of the reimbursable amount, the Department determined that notification to DNR had been given on April 2, 1991 under appropriate notification procedures. The Department then issued a supplemental reimbursement check to the applicant in the amount of \$2,775.84 on March 25, 1994. The balance remaining denied as reimbursable costs to the applicant in the amount of \$2,493.71 was denied because the costs claimed were incurred prior to April 2, 1991, the date of notification to DNR.
6. The first payment made by Waukesha State Bank to PETRO-1 of Wisconsin, Inc. for removal of the Underground Storage Tanks was made on December 4, 1991. ILHR 47.34(1)(b) governs determination of deductible amounts for claims filed after July 31, 1987 for costs incurred on or following August 15, 1991, and before July 1, 1995.

PROPOSED CONCLUSIONS OF LAW

- 1... Robert Groh is an owner-operator within the meaning of section of 101.141 of the Wisconsin Statutes.
2. The removal of the Underground- Storage Tanks at 24817 West Blue, Mound Road, Pewaukee, Wisconsin, was remedial action activity entitling Robert Groh to be reimbursed for costs approved for reimbursement, under section 101.143(3) of the Wisconsin Statutes.
3. The Department's action denying reimbursement in the amount of \$2,493.71 for costs incurred prior to April 2, 1991 was reasonable under sections 101.143(3)5 and 144.76 of the Wisconsin Statutes, and ILHR 47.30(2)4.
4. The Department's calculation of the total deductible applicable to the applicant's claim in the amount of \$5,251.54 was reasonable, within the meaning of section 101.143(3)(d)2 and ILHR 47.34(1)(b) of the Wisconsin Administrative Code.

PROPOSED DECISION

The State Hearing Office therefore finds that the decision of the Department of Industry, Labor and Human Relations dated March 25, 1994 establishing the final reimbursable costs to the applicant, Robert Groh, was reasonable and is affirmed.

Dated and Mailed
October 13, 1994

STATE HEARING OFFICER

William D. McKeown

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